



May 30, 2019

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Ex Parte Letter of West Telecom Services, LLC in CG Docket No. 17-59, WC Docket No. 17-97

Dear Ms. Dortch:

On behalf of West Telecom Services, LLC ("West"), Robert W. McCausland, Vice President of Regulatory and Government Affairs at West, submits this letter for consideration in connection with the upcoming June 6, 2019, June Open Meeting. This letter addresses the draft Declaratory Ruling and Third Further Notice of Proposed Rulemaking ("draft Declaratory Ruling") of the Federal Communications Commission ("FCC" or "Commission") in the *Advanced Methods to Target and Eliminate Unlawful Robocalls* proceeding.¹

West works tirelessly to combat illicit robocalls and supports the Commission's efforts to eliminate the scourge of nuisance calls made to consumers and businesses. West customers and affiliates both suffer from such calls, but both are also vulnerable to harm from overzealous call-blocking programs that prevent the completion of critical notification calls. Unfortunately, the Commission's use of an expedited Declaratory Ruling to implement default call blocking could itself increase overzealous call blocking and harm the very consumers whom the Commission is trying to protect.² Further, there is a real risk that large vertically-aligned providers would implement call blocking processes that favor the completion of their own notification calls and inhibit completion of notification calls of unaffiliated carriers and messaging providers. Failing to complete legitimate notification calls has significant

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Draft Declaratory Ruling and Third Further Notice of Proposed Rulemaking, CG Docket No. 17-59, WC Docket No. 17-97, FCC-CIRC1906-01 (May 16, 2019) ("draft Declaratory Ruling").

² West agrees with INCOMPAS that the proposed opt-out process in the draft Declaratory Ruling, which would allow voice service providers to offer customers call-blocking programs on an opt-out basis, would "represent a significant expansion of the authority of providers to block suspected robocalls" and that blocking calls by default "amounts to an overcorrection" that will reduce consumer confidence in voice calls. See *Ex Parte Presentation of Christopher S. Shipley*, Attorney and Policy Advisor, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, WC Docket No. 17-97 at 2 (May 30, 2019).

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consequences to citizens, and cannot be taken lightly. West has numerous examples of inappropriate blocking of legitimate-and-wanted notification calls, even before default call blocking has been permitted. For these reasons, West requests that the Commission recast the draft Declaratory Ruling and incorporate it in the Third Further Notice of Proposed Rulemaking, and before advancing to default call blocking, closely analyze the consequences of rapid implementation of major policy changes that could cause unintended harm.

Collaboration is central to West's engagement and approach in combatting illicit robocalls. For example, West was directly involved in the Robocall Strike Force, and West joined forces early on with the USTelecom-led Industry Traceback ("ITB") Group. As part of its collaborative approach, West has requested joint testing of any default call blocking programs currently being considered by major providers. West believes that it can help surface problems inherent in default call blocking programs in their trial phases, thus helping to prevent the harms that arise when important notification calls do not complete. West also believes that such trial-phase collaboration could help prevent a degradation in rural call completion. With this letter, West further invites major providers to partner with West in performing joint testing in trial phases of their default-call-blocking programs.

The draft Declaratory Ruling is slated to take effect upon its release, raising immediate possibilities of both over-breadth and under-inclusivity in its application to robocalls. As a preliminary matter, the draft Declaratory Ruling does not define several of the key components of its default blocking rules, most significantly, what constitutes an "illegal" call and "reasonable" practices. Before moving forward on this item, the Commission should carefully consider whether it is premature to adopt these provisions in their present form, without additional clarification, and further, before the SHAKEN/STIR framework has been fully implemented. A mechanism to identify and confirm white lists provided by certified or authorized carriers would aid in the completion of legitimate calls and better enable carriers to avoid completing calls from bad actors. Significantly, in its current form, the draft Declaratory Ruling risks allowing – or even promoting – blocking of certain categories of calls that do not fall squarely within the emergency exception, including school emergency messages and healthcare reminders.³ West's message notification services send hundreds of millions of voice calls and messages for schools, healthcare providers, and the like to parents, patients, and other consenting individuals per year. It is critical to the safety and health of these recipients and their loved ones that these calls are not mistakenly blocked by default or misidentified as illegal robocalls.

West is also concerned that the current ambiguities in the draft Declaratory Ruling will lead to unintended consequences and exploitation at the hands of large carriers. Should the Commission move forward with its proposed call blocking ruling, the Commission must ensure that blocking is applied in a nondiscriminatory, competitively-neutral manner. There should be a transparent process for

³ See *Ex Parte Presentation* of Mark W. Brennan, Counsel to the American Association of Healthcare Administrative Management, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278, 17-59, 18-152, WC Docket No. 17-97 at 1 (May 28, 2019) (noting that the draft Declaratory Ruling "could harm consumers by resulting in the erroneous blocking of lawful calls – including urgent calls affecting consumer health, safety, and financial well-being."). See also *Ex Parte Presentation* of Rebekah Johnson, CEO, Numeracle, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, WC Docket No. 17-97 at 1 (detailing its voice notification system for crime victims and citizens and the risk of these important notifications being blocked by default under the draft Declaratory Ruling, as well as the existing inconsistencies in suspicious call labeling and blocking).

prospectively ensuring delivery of important calls. Specifically, West encourages the Commission to require carriers that employ default call blocking, or that modify Caller-ID in a way that identifies calls as suspicious, to: 1) accept and utilize notification-provider white lists to prevent default blocking of legitimate and wanted calls, and 2) notify and provide to affected originators an opportunity to cure or otherwise demonstrate the legitimacy of wanted and legal calls that they originate, and preemptively ensure the completion of such calls on a going-forward basis. Further, large carriers should be prohibited from favoring their own automated services over those of competitive carriers, a practice that could reduce competition and its benefits to notification service customers and consumers. Without these checks, the broad use of a safe harbor for default call blocking would raise significant anticompetitive risks until competitive carriers are assured that the reasonable analytics used by major carriers are not resulting in discrimination.

West encourages the Commission to resolve issues that arise in call blocking programs through a collaborative process, continuing to engage with industry stakeholders and carriers to block illegal calls without cutting off critical messaging and notification services. The Commission should actively oversee carriers' processes and analytics used in call blocking programs, and the Commission should take on the role of a neutral arbiter to determine the reasonableness of such programs. As indicated above, with critical notification services at risk of becoming unintended targets of these broad default blocking policies, West is committed to continue its extensive engagement with the Commission and other carriers to combat illegal calls on a carefully and narrowly tailored basis. Carriers' efforts to maintain best practices in developing reasonable analytics to populate call blocking programs will be most effective, however, with the Commission's oversight to ensure that carriers uniformly apply competitively neutral blocking analytics to all calls, and do so in a non-discriminatory manner.

Should the Commission adopt the draft Declaratory Ruling as proposed, there is significant risk of harm to consumers and to carriers providing important public services. There are substantial adverse consequences from prematurely adopting default blocking rules without sufficiently clear definitions, standards, and appropriate practices. Accordingly, West urges the Commission to carefully examine the implications of the proposed blocking rules and to provide specific direction with respect to aforementioned call blocking practices to avoid discrimination and anticompetitive outcomes, as well as harm to the public interest for blocking of important and desired notification calls and messages.

Respectfully submitted,

/s/

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VP, Regulatory and Government Affairs
West Telecom Services, LLC

cc:

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